

No. 16459

United States
Court of Appeals
for the Ninth Circuit

RALPH MEYER,

Appellant,

vs.

IRVING I. BASS, Trustee in Bankruptcy of the
Estate of Vensep, Inc., etc., Bankrupt, and DI-
VISION OF LABOR LAW ENFORCE-
MENT,

Appellees,

vs.

IRVING I. BASS, Trustee in Bankruptcy of the
Estate of Vensep, Inc., Bankrupt,

Appellant,

vs.

RALPH MEYER,

Appellee.

Transcript of Record

Appeals from the United States District Court for the
Southern District of California
Central Division

FILED

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PAUL P. OGDEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant, Ralph Meyer:

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DOROTHY KENDALL,
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458 South Spring Street,
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For Appellee & Cross-Appellant, Irving I. Bass,
Trustee:

QUITTNER, STUTMAN & TREISTER,
HERMAN L. GLATT,
639 South Spring Street,
Los Angeles 14, California.

For Appellee, Division of Labor Law Enforcement:

PAULINE NIGHTINGALE,
CONRAD L. KLEIN,
JOSEPH ABIHIDER,
405 California State Building,
217 West First Street,
Los Angeles 12, California.

In the District Court of the United States, Southern
District of California, Central Division

No. 80333-WM

In the Matter of:

VENSEP, INCORPORATED, d/b/a YOUR
HOST and Also d/b/a CLUB NOCTURNE,
Alleged Bankrupt.

PETITION IN INVOLUNTARY
BANKRUPTCY

To the Honorable Judges of the United States
District Court, in and for the Southern District
of California:

The petition of Ted Mossman, Barbara Lake, and
Bettye Horsley, respectfully represents and shows:

I.

That Vensep, Inc., d/b/a Your Host, and also
d/b/a Club Nocturne, has had its principal place
of business at 3816 Sepulveda Boulevard, Culver
City, California, within the above judicial district,
for a longer portion of the six months immediately
preceding the filing of this petition than in any
other judicial district; and owes debts to the amount
of One Thousand Dollars (\$1,000.00) or more; and
is not a municipal, railroad, insurance or banking
corporation, or a building and loan association,
but is engaged in the restaurant and night club
business.

II.

Your petitioners are creditors of the said alleged bankrupt, having provable and unsecured claims against it, liquidated as to amount and not contingent as to liability, amounting in the [2*] aggregate to Five Hundred Dollars (\$500.00) or over, in excess of securities.

III.

That the claims of your petitioners are for services rendered by them to the said alleged bankrupt within two years last past, and are in the following amounts: Ted Mossman, \$2,233.00; Barbara Lake, \$34.80; Bettye Horsley, \$56.00.

IV.

Your petitioners allege that the said Vensep, Inc., d/b/a Your Host, and also d/b/a Club Nocturne, committed an act of bankruptcy in that, within four months preceding the filing of this petition, the said Vensep, Inc., on May 29, 1957, made a general assignment for the benefit of its creditors to Ralph Meyer.

Wherefore, your petitioners pray that service of this petition, with subpoena, may be made upon the said alleged bankrupt as provided in the Bankruptcy Act, and that the said alleged bankrupt may be adjudged by this Court to be a bankrupt within the purview of said Act.

/s/ TED MOSSMAN.

/s/ BARBARA LAKE.

/s/ BETTYE HORSLEY.

QUITTNER, STUTMAN &
TREISTER,

By /s/ HERMAN L. GLATT,
Attorneys for Petitioning
Creditors.

Duly Verified.

[Endorsed]: Filed July 17, 1957. Referee. [3]

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 17th day of July, 1957;

Whereas, a petition was filed in this court on the 17th day of July, 1957, against Vensep, Incorporated, d/b/a Your Host, and also d/b/a Club Nocturne alleged bankrupt above named, praying that it be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Joseph J. Rifkind, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Vensep, Incorporated, d/b/a Your Host, and also d/b/a Club Nocturne shall henceforth attend before said referee and submit to such or-

ders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ LEON R. YANKWICH,
District Judge.

[Endorsed]: Filed July 17, 1957, U.S.D.C. [5]

[Title of District Court and Cause.]

ADJUDICATION OF BANKRUPTCY

At Los Angeles, Calif., in said District, on the 16th day of August, 1957.

The petition of Ted Mossman, Barbara Lake, and Bettye Horsley filed on the 17th day of July, 1957, that Vensep, Incorporated, d/b/a Your Host, and also d/b/a Club Nocturne be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposing interest; and the alleged bankrupt having failed to appear or plead within the time provided in the subpoena or otherwise;

It is adjudged that the said Vensep, Incorporated, d/b/a Your Host, and also d/b/a Club Nocturne, is a bankrupt under the Act of Congress relating to bankruptcy.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

[Endorsed]: Filed August 16, 1957, Referee. [6]

[Title of District Court and Cause.]

REPORT AND ACCOUNT OF ASSIGNEE
FOR BENEFIT OF CREDITORS

To the Honorable Joseph J. Rifkind, Referee in
Bankruptcy:

Comes now Ralph Meyer, Assignee for benefit
of creditors of the above-named debtor, and re-
spectfully presents this, his report and account as
Assignee for benefit of creditors:

I.

On May 29, 1957, the above-named debtor made,
executed, and delivered to Petitioner a General
Assignment for the benefit of its creditors, true
and correct copy which is attached hereto, marked
Exhibit "A," and incorporated herein as if at this
point set forth verbatim.

II.

Petitioner took possession of the business prem-
ises of the debtor, insured the assets and caused a
physical inventory thereof to be taken. Petitioner
notified the taxing agencies, utility companies, and
Labor Commissioner that the assignment had been
made, and diverted the mail. Petitioner surrendered
the liquor license, asset of this estate, to the De-
partment of Alcoholic Beverage Control to be held
for resale. [7]

III.

The debtor was in default under the lease for the
business premises, and the lessor served notice of

said default and a demand to pay the delinquent amounts and terminating the lease.

IV.

The furniture, fixtures, and equipment were subject to a lien representing a portion of the original purchase price, and the unpaid balance thereof was in excess of \$100,000.00. The value of the fixtures at liquidation was less than \$15,000.00.

V.

It was impossible for Petitioner to offer the assets for sale as a going business because the lessor refused to make a lease with any prospective purchaser. Realizing the futility of retaining possession of the premises and fixtures any longer, Petitioner, through his counsel, negotiated a sale of whatever rights he might assert to the property for the sum of \$300.00 plus a waiver of administration rent during the period of his occupancy. In Addition, the lessor and lien holder agreed to store the merchandise inventory for a reasonable time in order to permit Petitioner to make a favorable sale thereof. This storage was without rent, and the free storage was part of the consideration for Petitioner's surrendering possession of the premises to the lien holder and lessor expeditiously.

VI.

At first, the lessor offered only a nominal amount for the merchandise and supplies; but after being refused by Petitioner (who solicited bids from

many persons), the lessor substantially raised its bid; and the merchandise and supplies were sold for the sum of \$960.05, which was the best bid for the merchandise and supplies that had originally been inventoried at \$1,562.24. [8]

VII.

The only remaining asset was the on-sale liquor license, which Petitioner sold to the highest bidder for the sum of \$5,800.00. In order that the license could be cleared for transfer to the purchaser, it was necessary that Petitioner pay in full the claims of the Department of Employment and the State Board of Equalization, payment of these claims being condition precedent to the transfer by the Department of Alcoholic Beverage Control of a liquor license.

VIII.

Petitioner retained Dorothy Kendall, attorney, to represent him in connection with the legal matters in this estate. Said attorney's petition will be filed separately.

IX.

Attached hereto, marked Exhibit "B," is a list of the receipts and disbursements handled by Petitioner during the assignment administration.

X.

Petitioner paid to himself the sum of \$423.70 as fee, being 6% of the gross moneys received in the estate, without regard to the additional asset re-

ceived, being a waiver of administration rent amounting to approximately \$900.00. Petitioner incurred expenses in the sum of \$141.10 for clerical, secretarial, telephone, stamps, stationery, and storage.

XI.

No agreement has been made, directly or indirectly, and no understanding exists for a division of fees between Petitioner and any other person, or at all.

Wherefore, Petitioner prays that an Order be made and entered herein approving, allowing, and settling this, his First and Final Report and Account, including the fees and reimbursement of expenses paid to himself in the total sum of \$564.80 and [9] costs of administration; and for such other and further relief as to the Court seems just.

Dated: December 5, 1957.

/s/ RALPH MEYER,

Assignee for Benefit of
Creditors. [10]

EXHIBIT A

General Assignment

This Assignment, made this 29th day of May, 1957, between Vensep, Inc., a corporation, of Culver

City, California, hereinafter referred to as Assignor, Ralph Meyer of Los Angeles, California, hereinafter referred to as Assignee.

Witnesseth: That whereas the said Assignor is indebted to divers persons, and is desirous of providing for the payment of same, so far as is in his power, by an assignment of all his property for that purpose:

Now Therefore, the undersigned, Vensep, Inc., as Assignor, for a valuable consideration, receipt of which is hereby acknowledged, does hereby make the following General Assignment for the benefit of Assignor's creditors to Ralph Meyer, as Assignee, of Los Angeles, California, under the following terms and conditions:

1. Assignor does hereby grant, bargain, sell, assign, and transfer to Assignee, his successors and assigns, in trust for the ultimate benefit of Assignor's creditors generally, all of the property of the Assignor of every kind and nature and where-soever situated, whether in possession, reversion, remainder, or expectancy, both real and personal, and any interest or equity therein not exempt from execution; included therein are all stock of merchandise, store furniture and fixtures, machinery, equipment, raw materials, merchandise in process, book accounts, books, accounts receivable, cash on hand, all choses in action (personal or otherwise), insurance policies, and all other personal property of every kind and nature involved in that certain

restaurant known as Vensep, Inc., located at 3816 South Sepulveda Blvd., now owned and conducted by Assignor in the City of Culver City, County of Los Angeles, State of California; excepting the leases of realty and leasehold interests in real property, unless and until mutually acceptable arrangements are made between lessors and Assignee.

2. This Assignment constitutes a grant deed to all real property owned by Assignor, whether or not said real property is specifically described herein. Certain of said real property is more specifically described in Exhibit "A," attached hereto and made a part hereof by reference, as though set forth verbatim. (Exhibit "A" attached; Yes No .

3. Assignor agrees to deliver to Assignee all books of account and records showing the names and addressess of all creditors, to execute and deliver all additional necessary documents immediately upon request by Assignee, and to endorse all indicias of ownership where required by Assignee, in order to complete the transfer of all assets to Assignee as intended by this Assignment including, but not limited to, all of Assignor's real and personal property and/or Assignor's interest therein including mortgages, deeds of trust, motor vehicles and patent rights where permitted by law or custom. Assignee is hereby authorized to execute all endorsements and demands requiring Assignor's signature, in the name of Assignor. Assignor fur-

ther authorizes Assignee to apply for any deposits, refunds (including specifically, among all others, claims for refund of income taxes paid) or claims wherever necessary, in the name of Assignee; Assignee is authorized to direct all Assignor's United States mail to be delivered to Assignee, and Assignee is expressly authorized and directed to open said mail as agent of Assignor; and to do any thing or act which the Assignee in his sole and arbitrary discretion deems necessary or advisable to effectuate the purposes of this assignment.

4. In the event the Assignor is engaged in the sale of alcoholic beverages, this assignment does not include transfer of any alcoholic beverages, but the Assignor hereby appoints the Assignee as his agent for the sole purpose of filing an application for a permit for the sale of the alcoholic beverages in the said place of business and/or sale of said alcoholic beverage licenses (said Assignee being vested with absolute discretion in regard thereto, and assuming no liability by reason thereof), and Assignor hereby assigns to Assignee all of the proceeds of such sale for the benefit of his creditors generally in accordance with the terms of this assignment.

5. Assignor and Assignee agree to the following:

(a) This instrument transfers legal title and possession to Assignee of all of said hereinabove described assets, and after taking actual custody thereof, Assignee, in his own discretion, may determine whether to continue all, or part, of the

business operations, or to liquidate said assets; if Assignee deems it advisable he may operate the business, and, after paying in full all claims of creditors, return the remainder, if any, to Assignor.

(b) Assignee, at his discretion, may sell and dispose of said assets upon such terms and conditions as he may see fit, at public or private sale; Assignee shall not be personally liable in any matter, and Assignee's obligations shall be in a representative capacity, only, as an Assignee for the general benefit of Assignor's creditors. Said Assignee shall administer this estate to the best of his ability but it is expressly understood that he, his agents, servants or employees shall be liable only for reasonable care and diligence in said administration, and he shall not be liable for any act or thing done by him, his agents, servants or employees in good faith in connection herewith.

(c) From the proceeds of sale, collections or operations, Assignee shall pay to himself as Assignee all of his charges and expenses, including his own reasonable remuneration and that of his agents and his attorney, as well as a reasonable fee to Assignor's attorney; all of said amounts to be determined at Assignee's reasonably exercised and sole discretion.

(d) Assignee may compromise claims, complete or reject Assignor's executory contracts, discharge at his option any liens on said assets and any indebtedness which under law is entitled to priority

of payment; Assignee shall have the power to borrow money, hypothecate and pledge the assets, and to do all matters and things that said Assignor could have done prior to this assignment. Any act or thing done by Assignee hereunder shall bind the assignment estate and the Assignee only in his capacity as assignee for the benefit of creditors.

(e) Assignor agrees (that provided any such may, by operation of law be not assignable), to make any and all claims for refund of taxes which may be due from the Director of Internal Revenue for income tax refunds, or otherwise, and to forthwith upon receipt of any such refunds pay them over to Assignee, and hereby empowers Assignee, as attorney in fact of Assignor, to make all claims for refunds which may be made by an attorney in fact.

(f) After paying all costs and expenses of administration as hereinabove set forth, and all allowed priority claims, Assignee shall distribute to all unsecured creditors, pro rata, the remaining net proceeds of this assignment estate; said payments to be made until all assets are exhausted, or these creditors are paid, or settled, in full; thereafter, the surplus of moneys and property, if any, to be transferred and conveyed to Assignor.

Accepted this 29th day of May, 1957.

/s/ RALPH MEYER,
Assignee.

Ralph Meyer vs.

VENSEP, INC.,

A Corporation, Assignor;

By /s/ CARLTON RAKER,

President;

/s/ ISABELLE BAKER,

Wife of Assignor, 4550 Clybourn Avenue, Burbank, California. [11]

Corporation

State of California,

County of Los Angeles—ss.

On this 29th day of May, 1957, before me, the undersigned Notary Public in and for said County and State, personally appeared Carlton Baker known to me to be the President and Isabelle Baker known to me to be the Secretary of the Vensep, Inc., the corporation which executed the within Assignment, known to me to be the persons who executed same on behalf of said corporation, and acknowledged to me that said corporation executed same.

Witness my hand and official seal.

[Seal] /s/ J. ROBERT GALINDO,

Notary Public in and for
said County and State.

EXHIBIT B

Assignee's Account
Receipts

Quitclaim to personal property	\$ 300.00
Sale of liquor license	5,800.00
Sale of merchandise and supplies	960.05
Telephone refund	1.78
	<hr/>
Total Receipts	<u>\$7,061.83</u>

Disbursements

Jack's Key Shops—change of locks	\$ 19.17
I. Bales—inventory and adjuster services	73.68
Recordation, signs, file	16.40
So. Calif. Water Co.—administration utility	6.70
Department of Employment—claim against debtor	1,655.08
State Board of Equalization—claim against debtor	1,746.30
Richard S. Johnston—insurance	105.27
Ralph Meyer—assignee fee	423.70
Ralph Meyer—office expense: clerical, secretarial, stamps, stationery, storage, telephone	141.10
Dorothy Kendall—on account, attorney for assignee	250.00
Irving I. Bass, Trustee—balance of funds	2,624.43
	<hr/>
Total Disbursements	<u>\$7,061.83</u>

Duly Verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 9, 1957, [12]

Referee.

[Title of District Court and Cause.]

PETITION OBJECTING TO REPORT AND
ACCOUNT OF ASSIGNEE AND SEEKING
SURCHARGE AGAINST ASSIGNEE AND
ATTORNEY FOR ASSIGNEE AND FOR
ORDERS TO SHOW CAUSE THEREON

The Petition of Irving I. Bass respectfully shows and alleges:

I.

That your Petitioner is the duly elected, qualified and acting Trustee in Bankruptcy herein.

II.

That on May 29, 1957, the above-named Bankrupt made an assignment for the benefit of its creditors to one Ralph Meyer as Assignee.

III.

That on July 17, 1957, and within four months of the execution of the aforementioned assignment an involuntary petition in bankruptcy was filed against Vensep, Inc., d/b/a Your Host, and also Club Nocturne. That said Vensep, Inc., d/b/a Your Host, and also Club Nocturne, was adjudicated bankrupt by an Order of this Court dated August 16, 1957.

IV.

That at the time of executing the said general assignment [14] for the benefit of its creditors the

Bankrupt was indebted to various of its employees for services rendered to said Bankrupt within ninety days prior to the execution of the assignment as aforesaid. That subsequent to the execution of said general assignment and prior to the inception of these proceedings Ralph Meyer as Assignee was duly advised that there were substantial sums of money owing by the Bankrupt to its employees.

V.

That during the course of said assignment the Assignee paid over to himself the sum of \$423.70 by way of fees and the sum of \$141.10 by way of reimbursement for expenses incurred by him. That said Assignee paid over to one Dorothy Kendall the sum of \$250.00 for services rendered by said Dorothy Kendall to him as attorney. That in addition, the said Assignee made the following additional disbursements:

Jack's Key Shops—change of locks	\$ 19.17
I. Bales—inventory and adjuster services	73.68
For recordation, signs and files	16.40
Southern California Water Company administration utilities	6.70
Richard S. Johnston, insurance	105.27

VI.

That it is the position of your Petitioner that the monies paid as aforesaid by the Assignee to himself for his fees and reimbursement of his ex-

penses and the monies paid by said Assignee to Dorothy Kendall and the various other persons hereinabove named are assets of this estate and recoverable pursuant to the provisions of Section 2a(21) of the Bankruptcy Act in that said disbursements, by virtue of the provisions of Section 1204 of the Code of Civil Procedure of the State of California, were subordinate to the lien rights of those employees of the Bankrupt entitled to priority pursuant to said Section 1204 of the Code of Civil Procedure. That [15] your Petitioner has succeeded to the lien rights of said employees.

Wherefore, your Petitioner prays that Orders to Show Cause be issued herein and directed to the said Ralph Meyer at 225 South Oxford Avenue, Los Angeles 5, California, and to the said Dorothy Kendall at 225 South Oxford Avenue, Los Angeles 5, California. That the said Ralph Meyer and Dorothy Kendall be and appear before this Court at its courtroom on a day certain, then and there to show cause, if any they have, why it should not be decreed that the report and account of the said Ralph Meyer heretofore filed in these proceedings be disallowed and why it should not further be decreed that the said Ralph Meyer be ordered and directed to turn over to this estate those monies heretofore enumerated which were paid by said Ralph Meyer to himself by way of fees and reimbursement and to those third persons heretofore listed, and that the said Dorothy Kendall be ordered and directed to turn over to this Court

the sum of \$250.00 heretofore paid to her as attorneys fees by said Assignee.

QUITTNER, STUTMAN &
TREISTER,

By /s/ HERMAN L. GLATT,

Attorneys for Irving I. Bass.

Duly Verified.

[Endorsed]: Filed July 17, 1958, Referee. [16]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE RE PETITION
OBJECTING TO ASSIGNEE'S ACCOUNT
AND REPORT AND SEEKING SUR-
CHARGE AGAINST ASSIGNEE AND AT-
TORNEY FOR ASSIGNEE

At Los Angeles, in Said District, on the 17th day of July, 1958.

Upon reading and filing the verified petition of Irving I. Bass, the Trustee in Bankruptcy herein, and good cause appearing therefor, it is

Ordered that Ralph Meyer and Dorothy Kendall and Division of Labor Law Enforcement of California be and appear before this Court in its courtroom, No. 330, Federal Building, Temple and Spring Streets, Los Angeles, California, on the 30th day of July, 1958, at 10:00 o'clock a.m., then and there to show cause, if any they have, why the prayer of

the said Petitioner should not be granted; and it is further

Ordered that if service upon said Ralph Meyer be made by mail that it shall be sufficient to address the envelope to said Ralph Meyer at 225 South Oxford Avenue, Los Angeles 5, California, and that if service upon said Dorothy Kendall be made by mail that it shall be sufficient to address the envelope to said Dorothy Kendall at 225 South Oxford Avenue, Los Angeles 5, California; and it is finally [18]

Ordered that if the Respondents herein, or either of them, desire to contest the Petition upon which this Order to Show Cause is based, then said Respondents, or either of them, shall file with this Court their answer or other pleading thereto not later than two days before the date set for hearing herein and shall serve a copy of said answer or other pleading upon Quittner, Stutman & Treister, 639 South Spring Street, Los Angeles 14, California, Attorneys for the Trustee herein.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

[Endorsed]: Filed July 17, 1958, Referee. [19]

[Title of District Court and Cause.]

PETITION RE OBJECTIONS TO REPORT
AND ACCOUNT OF ASSIGNEE FOR
BENEFIT OF CREDITORS AND FOR
ORDER TO SHOW CAUSE THEREON

To the Honorable Joseph J. Rifkind, Referee
in Bankruptcy:

The petition of the Division of Labor Law Enforcement, Department of Industrial Relations, State of California, respectfully shows and alleges:

I.

That your petitioner holds assignments of the claims of various former employees of the above-named bankrupt for wages earned within the ninety day period preceding May 29, 1957, and that a Proof of Priority Wage Claim in the sum of \$7,662.85 on behalf of said employees by virtue of Section 64a(2) of the Bankruptcy Act has been filed by your petitioner in the bankruptcy proceedings herein. [20]

II.

That on May 29, 1957, the above-named bankrupt made an assignment for the benefit of its creditors to one Ralph Meyer.

III.

That on July 17, 1957, and within four months of the execution of the aforementioned assignment, an involuntary petition in bankruptcy was filed against the bankrupt herein and an order of ad-

judication in bankruptcy was made by this Court on August 16, 1957.

IV.

That at the time of the execution of the above assignment for the benefit of its creditors to one Ralph Meyer, the bankrupt was indebted to petitioner's assignors for services rendered to said bankrupt within ninety days prior to the execution of the assignment as set forth in Proof of Priority Wage Claim of your petitioner on file herein; that the said Ralph Meyer as assignee was duly advised of the existence of the said priority wage claims upon the execution of the said general assignment and prior to the commencement of the bankruptcy proceedings herein.

V.

That during the course of the assignment for the benefit of creditors of the bankrupt herein, the assignee made the following disbursements: [21]

Jack's Key Shops; change of locks	\$ 19.17
I. Bales; inventory and adjuster services	73.68
Recordation, signs, file	16.40
So. Cal. Water Co.; administration utility	6.70
Dept. of Employment; claim against debtor	1,655.08
State Bd. of Equalization; claim against debtor	1,746.30
Richard S. Johnston; insurance	105.27
Ralph Meyer; assignee fee	423.70
Ralph Meyer; office expense: clerical, secretarial, stamps, stationery, storage, phone	141.10
Dorothy Kendall; on account, attorney for assignee ...	250.00
Total Disbursements	<u>\$4,437.40</u>

VI.

That it is the position of your petitioner that the payments made by the said assignee as aforesaid to the Department of Employment of the State of California and to the Board of Equalization of the State of California were improperly made for the reason that the said payments constituted preferences within the purview of Section 60 of the Bankruptcy Act, and for the further reason that by virtue of the provisions of Section 6756 of the California Revenue and Taxation Code and Section 1702 of the California Unemployment Insurance Code, the tax claims of the said State agencies are made subordinate to the prior labor claims of the assignors of your petitioner.

VII.

That it is the position of your petitioner that all of the disbursements made by the assignee to himself and otherwise as set forth in Paragraph V herein were improper for the reason that the said disbursements were subordinate to the lien rights of the priority wage claims of the assignors of your petitioner pursuant to the provisions of Section 1204 of the California Code of Civil Procedure.

Wherefore, your petitioner prays that an order to show cause be issued herein and directed to said Ralph Meyer at 225 South Oxford Avenue, Los Angeles 5, California, and that the said Ralph Meyer be ordered to appear before this Court on a day certain, then and there to show cause, if any, why it should not be decreed that the report and

account of the said Ralph Meyer heretofore filed in these proceedings be disallowed, and why it should not further be decreed that the said Ralph Meyer be ordered and directed to turn over to this estate those monies heretofore enumerated which were disbursed by the said [22] Ralph Meyer in the sum of \$4,437.40.

Dated: July 17, 1958.

PAULINE NIGHTINGALE and
CONRAD LEE KLEIN,

Attorneys for Division of Labor Law Enforcement,
Petitioner,

By /s/ PAULINE NIGHTINGALE.

Duly Verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 17, 1958, Referee. [23]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE RE PETITION OF
DIVISION OF LABOR LAW ENFORCE-
MENT OBJECTING TO ASSIGNEE'S AC-
COUNT AND REPORT AND SEEKING
SURCHARGE AGAINST ASSIGNEE

At Los Angeles, in Said District, on the 17th Day
of July, 1958.

Upon reading and filing the verified petition of
Division of Labor Law Enforcement, Department of
Industrial Relations, State of California, and good
cause appearing therefor, it is

Ordered that Ralph Meyer and Irving I. Bass, trustee in bankruptcy be and appear before this Court in its courtroom, No. 330 Federal Building, Temple and Spring Streets, Los Angeles, California, on the 30th day of July, 1958, at 10:00 a.m., then and there to show cause, if any he has, why the prayer of the said Petitioner should not be granted; and it is further

Ordered that if service upon said Ralph Meyer be made by mail that it shall be sufficient to address the envelope to said Ralph Meyer at 225 South Oxford Avenue, Los [26] Angeles 5, California; and Irving I. Bass, trustee in bankruptcy, by mail also and it is finally

Ordered that if the Respondent herein desires to contest the Petition upon which this Order to Show Cause is based, then said Respondent shall file with this Court his answer or other pleading thereto not later than two days before the date set for hearing herein and shall serve a copy of said answer or other pleading upon Pauline Nightingale and Conrad Lee Klein, attorneys for Division of Labor Law Enforcement, Department of Industrial Relations, State of California, 405 California State Building, 217 West First Street, Los Angeles 12, California, Petitioner herein.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

[Endorsed]: Filed July 17, 1958, Referee. [27]

[Title of District Court and Cause.]

ANSWER TO PETITION RE OBJECTIONS
TO REPORT AND ACCOUNT OF AS-
SIGNEE FOR BENEFIT OF CREDITORS

To the Honorable Joseph J. Rifkind, Referee in
Bankruptcy:

Comes now Ralph Meyer, Assignee for benefit of creditors of the above-named bankrupt, and, by way of answer to Petition re Objections to Report and Account of Assignee for Benefit of Creditors, respectfully represents as follows:

I.

Answering Paragraph I, Respondent does not have sufficient information to enable him to answer the allegations contained therein and, basing his denial upon said ground, denies that the sum of \$7,662.85, or any other sum, is the aggregate of labor claims entitled to priority.

II.

Answering Paragraph IV, Respondent denies each and every allegation contained therein.

III.

Answering Paragraph VI, Respondent denies each and every allegation contained therein; and further alleges that the [28] payments made by Respondent to said Department of Employment and State Board of Equalization were made in accordance with Section 24049 of the Business and Pro-

essions Code of the State of California, and Respondent further alleges that the provisions of said Section prevail over all other laws of the State of California.

In this connection, Respondent alleges that a licensee or one entitled to the benefits of a liquor license issued by the Department of Alcoholic Beverage Control takes and holds such liquor license subject to the provisions of the California Business and Professions Code, Section 24049, and by reason thereof, is entitled only to such proceeds of sale of any such license in excess of the claims which are entitled to priority according to the provisions of said Section.

IV.

Answering Paragraph VII, Respondent denies each and every allegation contained therein; and further alleges that Sections 3466 and 3467 of the Revised Statutes of the United States prevail; that under general assignments for the benefit of creditors, the claims of the Director of Internal Revenue take priority over the labor lien claimants, whose rights arise in accordance with Section 1204 of the Code of Civil Procedure of the State of California.

Respondent further alleges that the claim asserted by the Director of Internal Revenue in the above-entitled proceeding amounts to a sum in excess of \$14,000.00. That the gross sums received by the Assignee from liquidation of assets in the assignment estate were substantially less than said sum.

That all moneys, therefore, over and above the fees and expenses of the administration of the assignment estate, were payable and due to the Director of Internal Revenue on account of its claim.

Wherefore, Respondent prays that the Petition as filed [29] herein be dismissed; that it be adjudged that the Objectors have no lien rights or any rights to assert as Objectors; that the liens of the labor claimants, Objectors herein, be decreed to be subordinate to the liens of the Department of Employment and State Board of Equalization, as set forth in the California Business and Professions Code, Section 24049, and subordinate to the claim of the Director of Internal Revenue, as set forth in Sections 3466 and 3467 of the Revised Statutes of the United States.

Dated: July 24, 1958.

/s/ RALPH MEYER,
Assignee for Benefit of Creditors of Vensep, Inc.,
Respondent.

/s/ DOROTHY KENDALL,
Attorney for Respondent.

Duly Verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 25, 1958, Referee. [30]

[Title of District Court and Cause.]

ANSWER TO PETITION OBJECTING TO REPORT AND ACCOUNT OF ASSIGNEE AND SEEKING SURCHARGE AGAINST ASSIGNEE AND ATTORNEY FOR ASSIGNEE

To the Honorable Joseph J. Rifkind, Referee in Bankruptcy:

Comes now Ralph Meyer, Assignee for benefit of creditors of the above-named bankrupt, and, by way of answer to Petition Objecting to Report and Account of Assignee and Seeking Surcharge Against Assignee and Attorney for Assignee, respectfully represents as follows:

I.

Answering Paragraph IV, Respondent denies each and every allegation contained therein.

II.

Answering Paragraph VI, Respondent denies each and every allegation contained therein; and further alleges that Sections 3466 and 3467 of the Revised Statutes of the United States prevail; that under general assignments for the benefit of creditors, the claims of the Director of Internal Revenue take priority over the labor lien claimants, whose rights arise in accordance with Section 1204 of the Code of Civil Procedure [32] of the State of California.

Respondent further alleges that the claim asserted by the Director of Internal Revenue in the above-entitled proceeding amounts to a sum in excess of \$14,000.00. That the gross sums received by the Assignee from liquidation of assets in the assignment estate were substantially less than said sum. That all moneys, therefore, over and above the fees and expenses of the administration of the assignment estate, were payable and due to the Director of Internal Revenue on account of its claim.

Wherefore, Respondent prays that the Petition as filed herein be dismissed; that it be adjudged that the Objectors have no lien rights or any rights to assert as Objectors; that the liens of the labor claimants be decreed to be subordinate to the claim of the Director of Internal Revenue, as set forth in Sections 3466 and 3467 of the Revised Statutes of the United States.

Dated: July 28, 1958.

/s/ RALPH MEYER,
Assignee for Benefit of Creditors of Vensep, Inc.,
Respondent.

/s/ DOROTHY KENDALL,
Attorney for Respondent.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 29, 1958, Referee. [33]

Dorothy Kendall
Attorney at Law
225 South Oxford Avenue
Los Angeles 4, California

October 14, 1958.

Hon. Joseph J. Rifkind,
Referee in Bankruptcy,
Federal Building,
Los Angeles 12, California.

Re: Vensep, Inc., d/b/a Your Host,
and Also Club Nocturne,
Bankruptcy No. 80,333-WM.

Dear Referee Rifkind:

I have been served with a copy of the proposed Findings of Fact, Conclusions of Law, and Order in the above matter, and would like to make the following comments and suggestions with respect to modifying and correcting the Findings of Fact:

1. Finding No. III should be amplified to include the following: "The indebtedness of Vensep, Inc., to the Department of Employment of the State of California, and to the Board of Equalization of the State of California was incurred from and in connection with the operation of a business by Vensep, Inc., licensed by the Department of Alcoholic Beverage Control of the State of California; that the said Department of Employment of the State of California and Board of Equalization of the State of California requested that said Depart-

ment of Alcoholic Beverage of the State of California withhold transfer of the liquor license to the buyer thereof pending payment in full of the aforesaid indebtedness incurred by Vensep, Inc.; that the Department of Alcoholic Beverage Control of the State of California honored said 'withhold' on transfer of license and required, as condition precedent to transfer of license, the payment by Ralph Meyer, Assignee, to the said Department of Employment and Board of Equalization the sums due to said agencies from Vensep, Inc., the Assignor."

2. Finding No. IV should be amplified to include the following: "That Ralph Meyer, Assignee, paid the aforesaid sums to the aforementioned payees for services rendered by said respective payees in the reasonable preservation, care and conservation of the assets of Vensep, Inc., Assignor."

3. Finding No. VI should be amplified to include the following: "That no claim was filed with Ralph Meyer, Assignee, either by or on behalf of the employees of Vensep, Inc., Assignor, for wages earned and unpaid to said employees at any time at all. That no notice was given to Ralph Meyer, Assignee, by or on behalf of the said employees of Vensep, Inc., Assignor, of the existence of any claim for unpaid wages."

As undoubtedly you must realize, it is my full intention to, on behalf of Ralph Meyer, Assignee, appeal from your decision, and in view of this we

believe it essential that the Findings of Fact at least reflect the true facts and that they be complete in so reflecting the facts.

If your Honor is in accord with my opinion I will be pleased to prepare and file Findings of Fact in conformity with the foregoing suggestion.

Respectfully,

/s/ DOROTHY KENDALL.

DK:ecp.

cc: Quittner, Stutman & Treister, Pauline Nightingale, Conrad Lee Klein and Joseph Abihider.

Received October 15, 1958, Referee. [76]

Quittner, Stutman & Treister
Attorneys at Law
639 South Spring Street
Los Angeles 14, California

October 16, 1958.

Hon. Joseph J. Rifkind,
Referee in Bankruptcy,
Federal Building,
Temple & Spring Streets,
Los Angeles 12, California.

Re: Vensep, Inc., d/b/a Your Host and Also
Club Nocturne, No. 80,333-WM.

Dear Referee Rifkind:

This office has received a copy of the letter of October 14, 1958, sent to you by Miss Kendall. After examining the contents of said letter we feel that we would have no objection whatsoever to the amplifications proposed by Miss Kendall to Finding No. III and Finding No. IV. However, as to the amplification proposed for Finding No. VI, we would object to same for the reason that we feel that the notice question is completely immaterial to the issues involved, and for the further reason that to the best of our knowledge the Assignee on a number of occasions communicated with the Division of Labor Law Enforcement relative to labor claims earned within 90 days of the making of the assignment.

Very truly yours,

QUITTNER, STUTMAN &
TREISTER,

By /s/ HERMAN L. GLATT.

HLG:ep.

cc: Miss Dorothy Kendall, Mrs. Pauline Nightingale.

Received October 17, 1958, Referee. [77]

State of California
Department of Industrial Relations

Division of Labor Law Enforcement

Please Address Reply to 405 State Building, Civic
Center, Los Angeles 12, California.

October 15, 1958.

File No.: Civil 5710.

Hon. Joseph J. Rifkind,
Referee in Bankruptcy,
Federal Building,
Los Angeles 12, Calif.

Dear Referee Rifkind:

Re: Vensep, Inc., d/b/a Your Host, and Also
Club Nocturne, Bankruptcy No. 80,333-
WM.

This Division respectfully objects to the proposed modifications of the findings of fact in the above matter requested by counsel for Ralph Meyer, Assignee. The requested amplification of Finding No. VI is not material. Under the provisions of Section 1204 of the California Code of Civil Procedure no claim is required to be filed with the assignee, nor notice given. At the time this matter was heard, counsel for the assignee also asserted that notice of the labor claims was immaterial. Furthermore, the proposed modification does not reflect the true facts.

The records of the Labor Commissioner show that the assignee had notice of the existence of the

unpaid prior wage claims. A letter dated June 20, 1957, was received by the Labor Commissioner from Ralph Meyer, Assignee, advising of the assignment for benefit of creditors by Vensep, Inc. On July 12, 1957, the deputy labor commissioner handling the case discussed the claims by telephone with a Mr. Galindo of Ralph Meyer's office, and on July 17, 1957, the assignee was advised by letter that a hearing would be scheduled for July 31, 1957. Subsequently, a Miss Sorkin of Ralph Meyer's office advised this Division that all payroll records pertaining to the wage claims had been turned over by the assignee to the trustee in bankruptcy. It appears from the foregoing that there can be no doubt that the assignee had knowledge and notice of the existence of the wage claims.

Respectfully yours,

PAULINE NIGHTINGALE,
CONRAD LEE KLEIN,
JOSEPH ABIHIDER,

By /s/ PAULINE NIGHTINGALE,
Attorneys for Labor
Commissioner.

PN:GFD.

cc to: Dorothy Kendall, Attorney; Quittner, Stutman & Treister, Attorneys.

Received October 17, 1958, Referee. [78]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER RE OBJECTIONS TO
ASSIGNEE'S REPORT AND ACCOUNT

At Los Angeles, in Said District on the 23rd Day
of October, 1958.

This matter came on to be heard before the undersigned Referee in Bankruptcy, on the 30th day of July, 1958, at 10:00 o'clock a.m., in his courtroom, No. 330, Federal Building, Temple and Spring Streets, Los Angeles, California, upon petitions filed by the Trustee in Bankruptcy herein and by the Division of Labor Law Enforcement objecting to the report and account of Ralph Meyer as Assignee and seeking a surcharge against said Ralph Meyer for certain disbursements made by him as Assignee. The Trustee in Bankruptcy herein, Irving I. Bass, appeared in person and by and through his attorneys, Quittner, Stutman & Treister by Herman L. Glatt. The Division of Labor Law Enforcement appeared by and through its attorneys, Pauline Nightingale, Conrad E. Klein and Joseph Abihider by Pauline Nightingale. Respondent, Ralph Meyer, appeared in person and by and through his attorney, Dorothy Kendall.

It appearing that the parties having stipulated to the facts involved in the instant proceeding, and the Court having heard the [79] statements of counsel. having considered the evidence presented,

having studied the memoranda filed by counsel, and being fully advised in the premises,

Now, Therefore, this Court does hereby make its Findings of Fact and Conclusions of Law and Order as follows:

Findings of Fact

I.

That prior to May 29, 1957, Vensep, Inc., d/b/a Your Host and also Club Nocturne (hereinafter referred to as Vensep, Inc.), was engaged in the business of operating a restaurant and cocktail lounge. That on May 29, 1957, Vensep, Inc., executed a general assignment for the benefit of its creditors to one Ralph Meyer as Assignee. That at the time of the making of said general assignment, Vensep, Inc., was insolvent within the meaning of that term as it is set forth in Section 1 (19) of the Bankruptcy Act.

II.

That on July 17, 1957, a date within four months of the execution of the assignment to Ralph Meyer as aforesaid, an involuntary petition in bankruptcy was filed against Vensep, Inc., by certain of its creditors. That an order adjudicating Vensep, Inc., a bankrupt was entered by this Court on August 16, 1957.

III.

That during the pendency of said assignment, Ralph Meyer entered into the sale of a certain

on-sale liquor license standing in the name of Vensep, Inc., for the sum of \$5,800.00. That in connection with the transfer of said on-sale liquor license to the purchaser, Ralph Meyer paid out of the \$5,800.00 proceeds realized the sum of \$1,655.08 to the Department of Employment of the State of California and the sum of \$1,746.30 to the Board of Equalization of the State of California, said Department of Employment and Board of Equalization being aware of Meyer's capacity as Assignee of Vensep, Inc., at the time of said payments to them. That the monies paid by [80] Ralph Meyer to the Department of Employment of the State of California and to the Board of Equalization of the State of California represented the total indebtedness then owing to said agencies by Vensep, Inc. That the Department of Alcoholic Beverage Control required payment of said sums as a condition precedent to the transfer of said license.

IV.

That, additionally, during the pendency of the assignment, Ralph Meyer paid to himself an assignee's fee of \$423.70 and paid to Dorothy Kendall, in her capacity as his attorney, the sum of \$250.00. Said payments were made out of the assets of Vensep, Inc., then in the hands of Ralph Meyer as Assignee. That, further, from the assets of Vensep, Inc., then in his possession, Ralph Meyer made the following additional payments:

Jack's Key Shops—change of locks\$ 19.17

I. Bales—inventory and adjustor services 73.68

Recordation, signs and files	16.40
Southern California Water Company— administration utilities	6.70
Richard S. Johnston—insurance	105.27
Ralph Meyer—office expenses: clerical, secretarial, stamps, stationery, storage, telephone	141.10

V.

That subsequent to the inception of the instant proceeding, Ralph Meyer turned over to the Trustee in Bankruptcy herein the sum of \$2,624.43, said sum being the balance remaining in his hands after deducting from the total monies realized through disposition of all the assets of Vensep, Inc., those aforementioned sums paid by him.

VI.

That as of May 29, 1957, the date of the assignment to Ralph Meyer as aforesaid, there was owing by Vensep, Inc., to various of its former employees the sum of \$7,662.85 by way of wages and salaries for services rendered by said employees to Vensep, Inc., within the ninety-day period immediately prior to May 29, 1957. That as of May 29, 1957, Vensep, Inc., was indebted to the United States for taxes [81] owing in the sum of approximately \$7,000.00.

Conclusions of Law

I.

That all of the claims paid and disbursements made by Ralph Meyer as Assignee of Vensep, Inc., from and after May 29, 1957, as hereinabove enu-

merated, were and are subordinate in priority of payment to the wage claims of the debtor now bankrupt in the sum of \$7,662.85 and the lien thereof under Section 1204 of the Code of Civil Procedure of the State of California.

That the Trustee in Bankruptcy herein should have and recover judgment against Respondent, Ralph Meyer, for said improper disbursements in the sum of \$4,437.40.

III.

That from and after the execution of the general assignment by Vensep, Inc., to Ralph Meyer on May 29, 1957, pursuant to the provisions of Section 1204 of the California Code of Civil Procedure, a lien in the sum of \$7,662.85 arose and existed in favor of former employees of Vensep, Inc., as against all funds of Vensep, Inc., in the hands of Ralph Meyer as Assignee. That while said lien, pursuant to the provisions of Section 67c(2) of the Bankruptcy Act, is invalid as against the Trustee in Bankruptcy herein, said lien is capable of preservation by the Trustee herein for the benefit of this Estate.

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged and Decreed:

I.

That the report and account of Ralph Meyer as Assignee heretofore filed in these proceedings be

and the same is hereby disapproved and said assignee is surcharged in the sum of \$4,437.40.

II.

That the Trustee in Bankruptcy herein have and recover judgment against the assignee, Ralph Meyer, in the sum of \$4,437.40 together with interest thereon from July 17, 1958, the date of the filing of Trustee's petition herein, until said judgment is paid in full. [82]

III.

That that certain lien in the sum of \$7,662.85 arising in favor of former employees of Vensep, Inc., from and after May 29, 1957, as against the funds of Vensep, Inc., in the hands of Ralph Meyer be and the same is hereby preserved in the favor of this Estate and the Trustee in Bankruptcy thereof as against the Respondent, Ralph Meyer.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

Affidavit of Service by Mail attached.

Received October 10, 1958.

[Endorsed]: Filed October 23, 1958, [83] Referee.

[Title of District Court and Cause.]

PETITION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE PETITION
FOR REVIEW OF ORDER OF REFEREE
AND ORDER

Comes now Ralph Meyer, Petitioner, and respectfully represents as follows:

I.

Proposed Findings of Fact, Conclusions of Law, and Order were served upon Petitioner by service on his counsel on October 10, 1958.

II.

On October 14, 1958, Petitioner, through his counsel, requested of said Referee, by letter, amplification and modification of said Findings of Fact; and, thereafter, awaited word from the Honorable Referee with respect to the proposed amplifications and modifications.

On November 6, 1958, not having heard, Petitioner, through his counsel, respectfully inquired of the Referee concerning the decision of the Referee with respect to said modifications; and learned, on November 12, 1958, that the Order [85] had been made on October 23, 1958.

III.

Petitioner alleges that in all good faith he believed that notice would have been given to him with respect to the making of the Order, and that

he withheld earlier inquiry lest he be deemed inopportune in pressing the Referee for a decision.

IV.

At all times, Petitioner intended to apply for a review of the Order of the Referee, and requests leave to file the Petition for Review which is attached hereto.

Wherefore, Petitioner prays that an Order be made and entered herein granting him an extension of time within which to file Petition for Review of the Order of the Referee.

Dated: November 21, 1958.

/s/ RALPH MEYER,
Petitioner.

/s/ DOROTHY KENDALL,
Attorney for Petitioner.

Order

Denied, see Sec. 39e of Bankruptcy Act, *Brookay v. King* (9 Cir.) 236 F (2) 871, *California, etc., v. Sampsell* (9 Cir.) 196 F (2) 252.

Dated: November 24, 1958.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

Duly verified.

[Endorsed]: Filed November 24, 1958, [86]
Referee.

[Title of District Court and Cause.]

PETITION FOR REVIEW

Comes now Ralph Meyer and, by way of petition for review of the Referee's Order disapproving Report and Account of Assignee for Benefit of Creditors, copy of which is attached hereto, marked Exhibit "A," and made a part hereof as if at this point set forth verbatim, respectfully represents as follows:

I.

The findings of fact, as made by the Referee, do not properly state the facts, in that they fail to set forth the following, and said findings of fact should be amplified and corrected to reflect the true and complete facts, as follows:

A. To Finding III should be added: "The indebtedness of Vensep, Inc., to the Department of Employment of the State of California and to the Board of Equalization of the State of California was incurred from and in connection with the business of Vensep, Inc., licensed by the Department of Alcoholic Beverage Control of the State of California." [88]

B. To Finding IV should be added: "Ralph Meyer made the payments set forth particularly and specifically herein for services rendered by the said respective payees to the Assignee and in connection with the preservation, care, and preservation of the assets of Vensep, Inc., Assignor."

C. To Finding VI should be added: "No claim was filed with Ralph Meyer, Assignee, either by or on behalf of the employees of Vensep, Inc., Assignor, for wages earned and unpaid to said employees at any time at all."

II.

The Referee erred in the conclusions of law in that:

- A. They are contrary to the facts in this case;
- B. They are not supported by the evidence;
- C. They are contrary to law.

The Department of Alcoholic Beverage Control, as licensing agent of liquor licenses in the State of California, had and has the right to demand of licensees the payment of all taxes due to the State of California as condition precedent to transfer of said license and that the lien of the labor claimants, pursuant to Section 1204 of the Code of Civil Procedure of the State of California, is, in fact and in law, subordinate to the payment to the respective State agencies of the indebtedness owed to them.

III.

Petitioner is aggrieved by the Order appealed from herein in that said Order surcharges Petitioner in the sum of \$4,437.40, and that said surcharge is contrary to law in that said sum represents payments made by Petitioner to increase, conserve, and preserve the assets of the estate, and

that said payments were made by Petitioner lawfully, and that said payments were necessary and proper.

Wherefore, Petitioner prays that the Order disapproving [89] Report and Account of Assignee for Benefit of Creditors be reviewed by a Judge of the United States District Court; that the Referee's Order be reversed; that the Report and Account of Assignee for benefit of Creditors be settled and approved, and that the disbursements made by Petitioner as Assignee be allowed; and for such further relief as to the Court seems just.

Dated: November 21, 1958.

/s/ RALPH MEYER,
Petitioner.

/s/ DOROTHY KENDALL,
Attorney for Petitioner.

Duly verified.

[Endorsed]: Filed November 24, 1958, [90]
Referee.

[Title of District Court and Cause.]

NOTICE OF FILING CERTIFICATE ON RE-
VIEW OF REFEREE'S ORDER DATED
OCTOBER 23, 1958

To: Dorothy Kendall, Esq., 225 So. Oxford Ave-
nue, Los Angeles 4, California, Attorney for
Assignee, Petitioner on Review; Pauline Night-

ingale, Conrad Lee Klein, and Joseph Abihider, 405 California State Building, 217 West First Street, Los Angeles 12, California, Attorneys for Division of Labor Law Enforcement, Respondent on Review; Quittner, Stutman & Treister, Attn.: Herman L. Glatt, Esq., 639 So. Spring Street, Los Angeles 12, California, Attorneys for Trustee.

Notice is hereby given that the undersigned Referee in Bankruptcy has this date filed with the Clerk of the Court his Certificate on Review of the Order dated October 23, 1958.

Rule 204(d) of the Court provides that the reviewing party, within ten (10) days after the mailing of the notice of the filing of the certificate on review, shall serve upon the respondent and file with the Clerk in duplicate a memorandum of points and authorities; and that the respondent shall in like manner, serve and file a reply memorandum of points and authorities within five (5) days thereafter.

Dated: December 17, 1958.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

[Endorsed]: Filed December 17, 1958, [97]
U.S.D.C.

[Title of District Court and Cause.]

CERTIFICATE ON REVIEW OF REFEREE'S
ORDER DATED OCTOBER 23, 1958

To: Hon. William C. Mathes, United States District Judge.

The Undersigned, Joseph J. Rifkind, a Referee in Bankruptcy of the above-entitled court, does hereby certify as follows:

Statement of Case

The referee made an order on October 23, 1958, surcharging the assignee for the benefit of creditors in the sum of \$4,437.40 based on the ground that the assignee depleted the trust estate in his possession by paying certain expenses and tax claims which were subordinate in payment to certain priority wage claims. The objection to the assignee's report and account filed by the trustee in bankruptcy and that filed by the Division of Labor Law Enforcement were heard together by stipulation.

The petition for review was not filed within ten days after the entry of the order as required by Section 39c of the Bankruptcy Act, but was filed on November 24, 1958. No application for an extension was made or granted within the period of ten days after the entry of said order. The assignee on November 24, 1958, filed a petition for extension of time within which to file his petition for review. The application was denied because the time to

review had already expired and also because the referee felt that justification [98] for such extension was not shown even if the referee had jurisdiction to grant the extension. The belatedly filed petition for review is, however, being certified to the district judge because of the decision of In re Robert B. Steinberg (S.D. Cal.) 138 F. Supp. 462.

Summary of Evidence

The matter was heard upon a stipulation of facts entered into in open court, a summary of which is as follows:

The bankrupt, Vensep, Inc., under the names of Your Host and Club Nocturne, was prior to May 29, 1957, engaged in operating a restaurant and cocktail lounge. The bankrupt on May 29, 1957, executed a general assignment for the benefit of its creditors to Ralph Meyer as assignee. The bankrupt was at the time of the making of said assignment insolvent both in the equity as well as the bankruptcy definition of that term under Section 1(19) of the Bankruptcy Act. That on July 17, 1957, within four months of the execution of the assignment, an involuntary petition in bankruptcy was filed against the assignor-debtor who was thereafter adjudicated a bankrupt on August 16, 1957.

That during the pendency of the assignment, the assignee sold the assignor's liquor license for the sum of \$5,800.00. That out of the proceeds of sale the assignee paid to the Department of Employment of the State of California the sum of \$1,655.08

and to the Board of Equalization of the State of California the sum of \$1,746.30. That the Department of Alcoholic Beverage Control of the State of California required payment of said sums as a condition precedent to the transfer of said liquor license to the purchaser.

That during the pendency of the assignment, the assignee paid to himself as assignee's fees the sum of [99] \$423.70, to Dorothy Kendall as attorney for the assignee the sum of \$250.00, and disbursed for miscellaneous other items of expense incurred during the pendency of the assignment the sum of \$362.32, or a total of \$1,016.02.

That upon the appointment and qualification of the trustee in bankruptcy, the assignee turned over the balance remaining in his possession of \$2,624.43. That on May 29, 1957, when the assignment for the benefit of creditors was executed, the debtor (bankrupt) was indebted to numerous of its employees for wages due for personal services rendered by such employees to the bankrupt, within ninety (90) days immediately prior thereto aggregating \$7,662.85. That a Proof of Priority Wage Claim under Section 64a(2) of the Bankruptcy Act has been duly filed by the Division of Labor Law Enforcement on behalf of such employees.

Questions Presented on Review

The referee concluded that all of the claims paid and disbursements made by the assignee were subordinate in priority of payment to the payment of

the wage claims under Section 1204 of the Code of Civil Procedure of the State of California and surcharged the assignee for such improper disbursements in the sum of \$4,437.40.

The petitioner on review asserts that the referee erred in that the "Department of Alcoholic Beverage Control, as licensing agent of liquor licenses in the State of California, had and has the right to demand of licensees the payment of all taxes due to the State of California as condition precedent to transfer of said license and that the lien of the labor claimants, pursuant to Section 1204 of the Code of Civil Procedure of the State of California, is, in fact and in law, subordinate to the payment to the respective State agencies of the indebtedness owed to them." [100]

The errors complained of are more particularly set forth in the petition for review transmitted herewith.

Documents Transmitted With Certificate

The following documents are transmitted herewith, to wit:

1. Report and Account of Assignee for Benefit of Creditors dated December 5, 1957, and filed December 9, 1957;
2. Objection to Report and Account of Assignee, filed by trustee in bankruptcy on July 17, 1958, and Order to Show Cause issued pursuant thereto on July 17, 1958;

3. Answer of Assignee to Objection of trustee in bankruptcy filed July 29, 1958;

4. Objection to Report and Account of Assignee filed by Division of Labor Law Enforcement on July 17, 1958, and Order to Show Cause issued pursuant thereto on July 17, 1958;

5. Answer of Assignee to Objection of Division of Labor Law Enforcement filed July 25, 1958;

6. Memorandum of Points and Authorities of Division of Labor Law Enforcement filed July 29, 1958;

7. Memorandum of Points and Authorities of Assignee filed August 19, 1958;

8. Supplementary Memorandum of Points and Authorities of Division of Labor Law Enforcement filed August 29, 1958;

9. Trustee's Memorandum of Points and Authorities filed September 2, 1958;

10. Memorandum Opinion dated September 29, 1958;

11. Letter dated October 14, 1958, received October 15, 1958;

12. Findings of Fact, Conclusions of Law and Order [101] dated October 23, 1958;

13. Letter dated October 16, 1958, received October 17, 1958;

14. Letter dated October 15, 1958, received October 17, 1958;

15. Petition for Extension of Time Within Which to File Petition for Review of Order of Referee filed November 24, 1958, and Order thereon denying same;

16. Petition for Review filed November 24, 1958;

17. Notice of Filing Certificate on Review dated December 17, 1958.

Dated: December 17, 1958.

Respectfully transmitted,

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

[Endorsed]: Filed December 17, 1958, [102]
U.S.D.C.

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS
PETITION FOR REVIEW

To Ralph Meyer and His Counsel, Max Sisenwein:

Notice Is Hereby Given that on January 26, 1959, at the hour of 9:30 a.m. in the courtroom of the Honorable William C. Mathes, United States District Judge, the Trustee in Bankruptcy will move to dismiss the Petition for Review filed herein. Ground for said motion is that the said Petition for Review was not filed within the ten-day period prescribed by Section 39c of the Bankruptcy Act, 11 U.S.C., Section 67c, in that the Order disap-

proving the Assignee's report and account and surcharging him in the sum of \$4,437.40 was entered on the 23rd day of October, 1958, and the Petition for Review was not filed until November 24, 1958. Said motion will be based upon the entire record now before the District Judge.

Dated: January 9th, 1959.

QUITTNER, STUTMAN &
TREISTER,

By /s/ HERMAN L. GLATT,
Attorneys for Trustee in
Bankruptcy.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 12, 1959, [111]
U.S.D.C.

United States District Court for the Southern
District of California, Central Division
No. 80,333-WM—In Bankruptcy

In the Matter of:

VENSEP, INC., d/b/a YOUR HOST and Also
CLUB NOCTURNE,

Bankrupt.

ORDER ON REVIEW OF REFEREE'S ORDER
OF OCTOBER 23, 1958

Upon the petition for review filed by Ralph Meyer on November 24, 1958; upon the certificate

of Referee Joseph J. Rifkind filed December 17, 1958; upon the proceedings had before the Referee as shown by his certificate; and it appearing to the Court that:

(1) within four months of bankruptcy petitioner accepted, for the benefit of creditors, an assignment of the then-insolvent debtor's assets, including an on-sale California liquor license;

(2) thereafter and prior to the adjudication of the debtor as a bankrupt, petitioner sold the on-sale liquor license for \$5,800;

(3) from the proceeds of the sale petitioner paid to the Department of Employment of the State of California unemployment compensation contributions owed by the then-insolvent debtor amounting [113] to \$1,655.08, and also paid to the Board of Equalization of the State of California sales and use taxes owed by the then-insolvent debtor in the sum of \$1,746.30;

(4) the Department of Alcoholic Beverage Control of the State of California, pursuant to regulations promulgated by it under § 24049 of the California Business and Professions Code, required payment of said sums as a condition precedent to approval of the transfer of said liquor license to the purchaser;

(5) during the term of the assignment for the benefit of creditors, petitioner also paid to himself as assignee fees amounting to \$423.70, and paid to Dorothy Kendall as attorney for the assignee a

fee of \$250, and paid \$362.32 for miscellaneous expense items—a total of \$1,016.12;

(6) at the time the assignment for the benefit of creditors was executed, the then-insolvent debtor was indebted to various of its employees in the sum of \$7,662.85 for wages due for personal services rendered within the period of ninety days next preceding said assignment;

(7) following adjudication of the insolvent debtor as a bankrupt, petitioner turned over to the trustee in bankruptcy the assigned assets remaining in his possession in the amount of \$2,624.43, without paying any of the wage claims mentioned in (6) above;

(8) petitioner's payment of State sales [114] and use taxes, and of the State unemployment compensation contributions, owing by the then-insolvent debtor, without first paying the wage claims as provided by § 1204 of the California Code of Civil Procedure, was improper and contrary to law in that: (a) § 6756 of the California Revenue and Taxation Code and § 1702 of the California Unemployment Insurance Code expressly subordinate obligations for sales and use taxes and unemployment compensation contributions to obligations for wage claims whenever, as here, § 1204 of the Code of Civil Procedure applies, and (b), § 24049 of the California Business and Professions Code, does not in any way alter the preferences

otherwise established by the statutory provisions just mentioned;

(9) petitioner's payment of \$1,016.12 for assignee's fees and expenses, without first paying wage claims as required by § 1204 of the California Code of Civil Procedure, was likewise improper and contrary to law [Division of Labor Law Enforcement v. Stanley Restaurants, 228 F. 2d 420 (9th Cir., 1955)];

(10) the statutory liens of the wage claimants under State law were invalid as against the trustee in bankruptcy [see § 67c(2) of the Bankruptcy Act, 11 U.S.C., § 107c(2); and see 4 Collier on Bankruptcy, § 67.281 [1] at 311, particularly n.5 (14th ed., 1957)], and passed to the trustee to be preserved for the benefit of the bankrupt estate [see last sentence of § 67c of the Bankruptcy Act, 11 U. S. C., § 107c; cf. 4 Collier on Bankruptcy, § 67.281 [2] (14th ed., 1957)], which hence had, as to the assets of the [115] erstwhile insolvent debtor now bankrupt, a claim senior to the claims of the recipients of the disbursements by petitioner listed in (2) and (5) above;

(11) petitioner is accordingly subject to surcharge under § 2a(21) of the Act [see 11 U.S.C., § 11a(21); Hall v. Goggin, 148 F. 2d 774 (9th Cir., 1945); compare: in re Hollywood Premiere, 228 F. 2d 492 (9th Cir., 1955)], unless the assignee-petitioner can show "that disbursements in question were approved, upon notice to creditors and

other parties in interest, by a court of competent jurisdiction prior to the bankruptcy proceeding” [11 U.S.C., § 11a(21); 1 Collier on Bankruptcy, § 2.79 at 353 (14th ed., 1957)];

(12) since the assignee-petitioner makes no claim that the disbursements in question were approved by any court prior to the bankruptcy proceeding, the condition subsequent stated in § 2a(21) of the Act can have no application here [11 U.S.C., 11a (21)]; and

(13) although petitioner failed to file a petition for review within the time prescribed by § 39c of the Act [see 11 U.S.C., 67c], this Court exercising equitable powers may, and under the circumstances here should, entertain the present petition for review [in re Steinberg, 138 F. Supp. 462 (S.D., Cal., 1956)].

It Is Now Ordered that the motion of the trustee in bankruptcy to dismiss the petition for review is hereby denied, and the Referee’s order of October 23, 1958, under [116] review is hereby confirmed.

It Is Further Ordered that the Clerk this day serve copies of this order by United States Mail upon

- (1) Referee Joseph J. Rifkind;
- (2) The attorney for petitioner; and
- (3) The attorneys for respondents.

March 27, 1959.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed March 30, 1959, U.S.D.C.

Entered March 31, 1959. [117]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

To the Clerk of the Above-Entitled Court:

Notice Is Hereby Given that Ralph Meyer hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Order dated March 27, 1959, made by Honorable William C. Mathes, Judge of the United States District Court, reviewing the Order of Honorable Joseph J. Rifkind, Referee in Bankruptcy, dated October 23, 1958.

Dated: April 13, 1959.

MAX SISENWEIN and
DOROTHY KENDALL,

By /s/ MAX SISENWEIN,
Attorneys for Appellant,
Ralph Meyer.

[Endorsed]: Filed April 14, 1959, U.S.D.C. [118]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Irving I. Bass, the Trustee in Bankruptcy herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that portion of the Order on Review of Referee's Order of October 23, 1958, dated March 27, 1959, made by the Honorable William C. Mathes, Judge of the United States District Court, denying the motion of said Trustee in Bankruptcy to dismiss the petition for review filed by Ralph Meyer seeking a review of the order of the Honorable Joseph J. Rifkind, Referee in Bankruptcy, dated October 23, 1958.

Dated: This 17th day of April, 1959.

QUITTNER, STUTMAN &
TREISTER,

By /s/ HERMAN L. GLATT,
Attorneys for Irving I. Bass,
Trustee in Bankruptcy.

[Endorsed]: Filed April 21, 1959, U.S.D.C. [125]

[Title of District Court and Cause.]

TRUSTEE'S STATEMENT OF POINT
ON APPEAL

Comes Now Irving I. Bass, Trustee in Bankruptcy, Appellee and Cross-Appellant herein, and,

pursuant to Rule 75d of the Federal Rules of Civil Procedure, furnishes the following Statement of Point on Appeal:

The Motion of the Trustee in Bankruptcy to dismiss the Petition for Review filed by Appellant, Ralph Meyer, on November 24, 1958, seeking a review of the Referee's Order of October 23, 1958, Re Objections to Assignee's Report and Account should have been granted on the authority of Section 39c of the Bankruptcy Act, 11 U.S.C., Section 67c, for the reason that said Petition for Review was filed more than ten days after the entry of the said Order of the Referee of October 23, 1958.

Respectfully submitted,

QUITTNER, STUTMAN &
TREISTER,

By /s/ HERMAN L. GLATT,
Attorneys for Irving I. Bass, Trustee in Bankruptcy, Appellee and Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 27, 1957, U.S.D.C. [133]

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which are

listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case; and that said items are the originals unless otherwise shown on this list:

A. Names and Addresses of Attorneys.

Petition in Involuntary Bankruptcy, filed 7/17/57.

Order of General Reference, filed 7/17/57.

Adjudication of Bankruptcy, filed 8/21/57.

Report and Account of Assignee for Benefit of Creditors, filed 12/9/57.

Trustee's Petition objecting to Report and Account of Assignee and seeking surcharge against Assignee and Attorney for Assignee and for Orders to Show Cause thereon, filed 7/17/58.

Order to Show Cause re Petition objecting to Assignee's Account and Report and seeking surcharge against Assignee and Attorney for Assignee, filed 7/17/58.

Division of Labor Law Enforcement's Petition re objections to report and account of Assignee for Benefit of Creditors and for Order to Show Cause thereon, filed 7/17/58.

Order to Show Cause re Petition of Division of Labor Law Enforcement objecting to Assignee's Account and Report and seeking surcharge against Assignee, filed 7/17/58.

Answer of Ralph Meyer, Assignee, to Petition re objections to report and account of Assignee for Benefit of Creditors, filed 7/25/58.

Answer of Ralph Meyer, to Petition objecting to

report and account of Assignee and seeking surcharge against Assignee and Attorney for Assignee, filed 7/29/58.

Memorandum of Points and Authorities of Division of Labor Law Enforcement, filed 7/29/58.

Memorandum in support of Assignee's Report and Account and in opposition to objections thereto, filed 8/19/58.

Supplementary Memorandum of Division of Labor Law Enforcement, filed 8/29/58.

Trustee's Memorandum re objections to Assignee's Report and Account and in support of surcharge against Assignee and Attorney for Assignee, filed 9/2/58.

Memorandum Opinion re Objections to Report and Account of Assignee, filed 9/29/58.

Letter, dated 10/14/58, addressed to Hon. Joseph J. Rifkind, Referee in Bankruptcy, received 10/15/58.

Letter, dated 10/16/58, addressed to Hon. Joseph J. Rifkind, Referee in Bankruptcy, received 10/17/58.

Letter, dated 10/15/58, addressed to Hon. Joseph J. Rifkind, Referee in Bankruptcy, received 10/17/58.

Findings of Fact, Conclusions of Law, and Order re Objections to Assignee's Report and Account, filed 10/23/58.

Petition for extension of time within which to file Petition for Review of Order of Referee and denial of same, filed 11/24/58.

Petition for Review, filed 11/24/58.

Notice of filing Certificate on Review of Referee's Order dated 10/23/58, filed 12/17/58.

Certificate on Review of Referee's Order dated October 23, 1958, filed 12/17/58.

Additional Memorandum of Ralph Meyer, Petitioner, in support of his Petition for Review, filed 12/29/58.

Memorandum of Trustee in opposition to Petition for Review, filed 1/5/59.

Trustee's Notice of Motion to Dismiss Petition for Review, filed 1/12/59.

Order on Review of Referee's Order of October 23, 1958, filed 3/30/59, and entered 3/31/59.

Notice of Appeal, filed by Ralph Meyer on 4/14/59.

Designation of Ralph Meyer of portions of the record to be contained in the Record on Appeal, filed 4/14/59.

Affidavit of Service by Mail of Ralph Meyer re Notice of Appeal, filed 4/15/59.

Notice of Appeal, filed by Irving I. Bass, Trustee, on 4/21/59.

Designation of Record on Appeal of Irving I. Bass, Trustee, filed 4/21/59.

Trustee's Statement of Point on Appeal, filed 4/27/59.

Dated: May 4, 1959.

[Seal] JOHN A. CHILDRESS,
 Clerk.

By /s/ WM. A. WHITE,
 Deputy Clerk.

[Endorsed]: No. 16459. United States Court of Appeals for the Ninth Circuit. Ralph Meyer, Appellant, vs. Irving I. Bass, Trustee in Bankruptcy of the Estate of Vensep, Inc., etc., Bankrupt, and Division of Labor Law Enforcement, Appellees, vs. Irving I. Bass, Trustee in Bankruptcy of the Estate of Vensep, Inc., Bankrupt, Appellant, vs. Ralph Meyer, Appellee. Transcript of Record. Appeals From the United States District Court for the Southern District of California, Central Division.

Filed: May 5, 1959.

Docketed: May 8, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 16459

RALPH MEYER, Assignee, etc.,

Appellant,

vs.

IRVING I. BASS, Trustee,

Appellee & Cross-Appellant,

DIVISION OF LABOR LAW ENFORCEMENT,

Appellee.

STATEMENT OF POINTS

Comes now Ralph Meyer, the Appellant and Cross-Appellee herein, and pursuant to Rule 17 (6) of the Rules of this Court, furnishes the following statement of points on appeal:

1. That the regulations promulgated by the Department of Alcoholic Beverage Control of the State of California, pursuant to Section 24049 of the California Business and Professions Code, are valid and enforceable regulations and were and are binding upon the Appellant herein as Assignee for the benefit of creditors of Vensep, Inc., etc.

2. That the Appellant as Assignee was required to and did properly and legally pay to the Department of Employment of the State of California and to the Board of Equalization of the State of Cali-

ifornia, the monies due and owing to said Departments by the assignor (now the bankrupt).

3. That the Appellant as Assignee properly and legally paid to himself fees as Assignee and properly expended miscellaneous expenses including attorneys fees, during the course of the administration of said assignment proceedings.

4. That the Referee in Bankruptcy committed error in making its Findings of Fact, Conclusions of Law, and Order dated October 23, 1958, surcharging the Appellant for the payments made to the Department of Employment of the State of California and to the Board of Equalization, which payments were made in accordance with the regulations of the Department of Alcoholic Beverage Control of the State of California, and further surcharging the Appellant for payments made for administration expenses. That said Order is erroneous and contrary to law.

5. That the Order made by the District Court, dated March 27, 1959, wherein it confirmed the Order of the Referee, dated October 23, 1958, is erroneous and contrary to law, in that said Order confirmed the surcharging of Appellant in the same manner as set forth in the Referee's Order, dated October 23, 1958.

6. That the Order made by the District Court, dated March 27, 1959, wherein it denied the motion of the Trustee in Bankruptcy to dismiss the petition

for review of the Appellant is proper and said motion of said Trustee to dismiss the petition for review was properly denied.

Dated: May 8th, 1959.

Respectfully submitted,

MAX SISENWEIN and
DOROTHY KENDALL,

By /s/ MAX SISENWEIN,
Attorneys for Appellant,
Ralph Meyer.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 9, 1959, U.S.C.A.

